

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

Decision No.: 1105-BR-89

Date: Dec. 15 , 1989

Claimant: Kenneth L. Wilkerson

Appeal No.: 8909713 &
8909714

S. S. No.:

Employer: Closet Crafters, Inc.

L. O. No.: 9

Appellant: EMPLOYER

Issue: Whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the law and whether the claimant is receiving or has received dismissal payment or wages in lieu of notice, within the meaning of Section 6(h) of the law.

—NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

January 14, 1990

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals affirms the Hearing Examiner's decision in case number 8909713, dealing with severance pay under Section 6(h) of the law. It is quite clear from the testimony that neither party

was absolutely certain whether the two checks received were severance pay, pay for past work, or payments made to remunerate the claimant for commissions already earned but not yet paid. The evidence is far from clear as to exactly what these payments were intended to be. In such a case, it is appropriate to make a finding against that party who had the burden of proof on the issue. Since the employer had control of the records in this case, it is appropriate to place the burden on the employer to demonstrate that the payments were severance pay, especially since they were entitled something else. Since the employer did not meet its burden with enough evidence for the Board to find as a fact that the claimant's were severance pay, the Board will affirm the Hearing Examiner's finding that the payments were not severance pay and not deductible from benefits otherwise payable.

With respect to the claimant's separation from employment, dealt with in appeal number 8909714, the Board modifies the decision of the Hearing Examiner. The Board agrees with the decision of the Hearing Examiner that the claimant did voluntarily quit his job within the meaning of Section 6(a) of the law. The Board also agrees that the claimant did have "valid circumstances" for leaving his employment, because there was a substantial cause connected with the conditions of employment.

The Board disagrees, however, with the beginning date of the penalty. On July 14, 1989 the claimant gave notice that he would be quitting on Friday, July 28, 1989. He intended to work the following two weeks. On the following Monday, July 17, 1989 the employer accepted his resignation and determined that he should leave immediately. It is always possible, of course, that a claimant can be discharged during his notice period. See, for example, Salisbury v. Levenson & Klein (395-BH-84), where the claimant, who had already given her two weeks' notice of resignation, was discharged for misconduct which took place after the notice was given. In that case, the separation from employment was considered a discharge, and the claimant was disqualified under Section 6(b) of the law.

This case, however, is closer to the case of Stefan v. Levenson & Klein (1794-BR-82), in which a claimant gave two weeks' notice of resignation, and where the employer, for his own convenience, simply accelerated the leaving date. As the Board ruled in the Stefan case, any penalty imposed under Section 6(a) of the law should take effect on the proposed effective date of the resignation. For this reason, the claimant should be penalized under Section 6(a) of the law, but the penalty should not start until the intended date of